

## **GUILTY PLEA COLLOQUY – PETTY OFFENSES<sup>1</sup>**

(Use for any offense for which the statutory penalty is six months or less)

**DATE**

No. **CR**

**United States v.**

AUSA:

Defendant's Lawyer:

Probation officer: **Name**

Interpreter: **None**

**[THE JUDGE WILL HAVE ANY INTERPRETER SWORN]**

**[THE JUDGE WILL ANNOUNCE THE CASE]**

You're **[Mr./Ms. defendant]**? I'm Paul Zoss, a United States Magistrate Judge. On **[date of Information]**, the United States Attorney filed a \_\_\_\_ - count Information against you. In the information, the United States Attorney charges [here, the judge will summarize the **charge(s)** against the defendant.] [You've pled not guilty.] I've been advised that you now wish to [change your **plea(s)** and] enter **(a plea)(pleas)** of guilty[ to **Count(s)** \_\_\_\_ of the Information].

**[Mr./Ms. defense counsel]**, is that your understanding?

### **1. THE OATH**

**[Mr./Ms. defendant]**, would you please raise your hand?

**[THE JUDGE WILL PLACE THE DEFENDANT UNDER OATH]**

You may put your hand down. **[Mr./Ms. defendant]**, you're now under oath. You should tell the truth because if you don't, you could be prosecuted for perjury or for making a false statement. In any such prosecution, the Government could use against you any statements you make here under oath.

Even though you've come here today to plead guilty, you have the right to stay with your not-guilty **plea(s)**. If you change your mind during this hearing and decide you

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<sup>1</sup> A "petty offense" is a **Class B or Class C misdemeanor or an infraction** (18 U.S.C. § 19), all of which are punishable by imprisonment for six months or less (18 U.S.C. § 3559(a)(7)-(9)). **For a Class A misdemeanor, use the normal felony guilty plea colloquy.**

don't want to plead guilty, just tell me and I'll recess the hearing and [*schedule your case for trial*] [*your case will go to trial as scheduled*].

Do you understand?

## 2. ENSURING MENTAL CAPACITY

[**Mr./Ms. defendant**], would you please state your full name? How old are you? How far did you go in school?

*[Where it appears the defendant may not be a U.S. citizen, the judge may ask the following questions: Are you a U.S. Citizen? **If the answer is "no,"** the judge will ask the following question: Of what country are you a citizen?]*

*[Where it does not appear English is the defendant's native language, the judge may ask the following questions: Is (Spanish) your native language? The judge then may ask one or both of the following questions: (1) Do you understand the English Language? (2) Are you able to hear and understand what the interpreter is saying to you in (Spanish)?]*

[**Mr./Ms. defendant**], will you promise to let me know if you have problems hearing or understanding anything that comes up during this hearing today?

Have you ever **abused drugs or alcohol**? [*If "yes," then the judge will say the following:*] Do you think the fact you used (*drugs and/or alcohol*) in the past might make it hard for you to understand the legal matters we'll be talking about at this hearing today?

Have you ever suffered from **depression, anxiety, or any other mental illness**? [*If "yes," then the judge will say the following:*] Please give me a brief summary of your mental health problems. Do you think your mental health problems (*or the medications you're taking to treat your mental health problems*) might make it hard for you to understand the legal matters we'll be talking about at this hearing today?

Within the past week, have you used or taken **alcohol, legal or illegal drugs, or prescription or non-prescription medication**? [*If "yes," then the judge will say the following:*] What have you used or taken? Do you think this might interfere with your ability to understand the legal matters we'll be talking about at this hearing today?

Do you feel you're competent to proceed with a plea hearing today?

[Mr./Ms. defense counsel], do you agree?

**I ALSO AGREE, AND SO FIND.**

**3. RIGHT TO A LAWYER**

[Mr./Ms. defendant], you have the right to a lawyer to help and represent you during every stage of this case. If at any time you can't afford a lawyer, you're entitled to a free one.

[Mr./Ms. defendant], are you satisfied with the representation you've received from [Mr./Ms. defense counsel]?

**4. INFORMATION**

[Mr./Ms. defendant], do you understand what you've been charged with in this case?

[Mr./Ms. defense counsel], do you believe your client understands the charge(s) against him/her?

**5. PENALTIES**

[Mr./Ms. defendant], under the statutes that apply to (this charge)/(these charges),

(On Count 1,) You could be sent to jail for up to \_\_\_\_\_ months; you could be placed on probation for up to \_\_\_\_\_ years; and you could be fined up to \$\_\_\_\_\_.

*[(Repeat for any other counts;)]*

I also will impose a special assessment of \$10 (on each count to which you plead guilty, which would be a total of \$ \_\_\_\_\_). I also have the power to order **restitution**, if applicable.

Do you understand the statutory penalties?

6. **COLLATERAL CONSEQUENCES FOR DEFENDANTS WHO ARE NOT U.S. CITIZENS**

Since you're not a U.S. citizen, this conviction could affect your status with immigration authorities and any rights you may have to residency in the United States.

Do you understand?

7. **RIGHT TO A TRIAL:**

[*Mr./Ms. defendant*], if you plead guilty, you'll be giving up your one chance for a trial on (this charge)/(these charges).

You have the right to a speedy, public trial before me. I'd try your case based on the law and what's submitted into evidence at trial. I'd presume that you're innocent. The presumption of innocence would remain with you unless and until, at the end of your trial, the prosecution has convinced me of your guilt beyond a reasonable doubt. The presumption of innocence alone is enough for you to be acquitted of (this charge)/(these charges).

The prosecution would have to call its witnesses to testify under oath here in court. You'd be able to see and hear their testimony, and they'd be able to see you while they're testifying. [*Mr./Ms. defense counsel*] wouldn't have to question the prosecution's witnesses at all, but if (s)he wanted to, (s)he could confront them by cross-examining them.

The burden of proof would remain on the prosecution throughout the trial. You wouldn't have to put on a defense or produce any evidence. However, if you wanted to, you could present any relevant evidence. For example, you could make witnesses come to court by having subpoenas served on them.

You could testify at your trial if you wanted to, but you wouldn't have to. If you decided not to testify, I wouldn't hold it against you.

You'd have the right to appeal, and the right to a free lawyer to help you with your appeal if you couldn't afford one.

Do you understand the rights I've just described to you?

## 8. WAIVER OF RIGHTS BY PLEADING GUILTY

If you plead guilty, you'll be giving up your right to a trial. You also will be waiving your right to raise any matters that might have helped you to defend this case, including issues you could have raised in motions for discovery, motions challenging the Information, motions to dismiss the case, or motions to suppress evidence.

If you plead guilty, you'll have no trial. I'll adjudge you guilty based on your plea(s), just as if you had a trial and I found you guilty.

[Mr./Ms. defendant], do you understand, if you plead guilty, you won't have a trial?

## 9. SENTENCING HEARING

[Mr./Ms. defendant], if you're adjudged guilty, you're entitled to a sentencing hearing. At the sentencing hearing, the lawyers can present witnesses and exhibits on any sentencing issue, and you'll be given a chance to talk to me directly to tell me anything you want.

During the sentencing hearing, I'll have the responsibility for determining your sentence. I could impose any reasonable sentence permitted by law, which means you could receive a sentence all the way up to the maximum statutory sentence. You should understand that the sentence I give you may be different from what you're hoping for or what [Mr./Ms. defense counsel] may have predicted. Also, after your guilty plea(s) is/are accepted by me, you'll have no right to withdraw your guilty plea(s), even if you don't like the sentence I give you. However, under some circumstances, you and/or the Government may have the right to appeal from what happens at the sentencing hearing.

## 10. ELEMENTS AND FACTUAL BASIS

*[The judge either will have the prosecutor discuss the elements and the required factual basis for each count, or will do so him/herself, i.e.:]*

[Mr./Ms. defendant], to convict you on Count 1 of the Indictment/Information, the prosecution would have to prove all of the following elements beyond a reasonable doubt:

*[The judge/prosecutor will recite the elements and obtain a factual basis for the guilty plea to Count 1, and will repeat the process for any other counts.]*

[Mr./Ms. prosecutor], did [I] [you] correctly explain the elements of the charge(s) to the defendant? Do you believe [I've] [you've] established an adequate factual basis for (a guilty plea) (guilty pleas) to the charge(s)?

[Mr./Ms. defense counsel], do you think your client understands the elements of the charge(s) against him/her? Have you had full access to the Government's discovery materials? Do you believe they support a factual basis for (a guilty plea)/(guilty pleas) to the charge(s)? Do you know of any possible defenses to the charge(s) you haven't discussed with your client?

11. **ENSURING VOLUNTARINESS OF PLEA(S)**

[Mr./Ms. defendant], has anyone forced or pressured you to plead guilty, or made any promises to you to get you to plead guilty?

[Mr./Ms. defense counsel], do you believe (a guilty plea)/(guilty pleas) by your client to the charge(s) against him/her would be voluntary?

12. *[The judge will ask the lawyers the following question:] ARE THERE ANY FURTHER QUESTIONS YOU THINK I SHOULD ASK, [Mr./Ms. defense counsel]? [Mr./Ms. prosecutor]?*

13. [Mr./Ms. defendant], DO YOU HAVE ANY QUESTIONS ABOUT ANYTHING? ARE YOU PLEADING GUILTY OF YOUR OWN FREE WILL, AND BECAUSE YOU ARE, IN FACT, GUILTY?

14. [Mr./Ms. defendant], FORMALLY AND FOR THE RECORD, how do you plead to Count I of the Information -- guilty or not guilty? (Repeat for any other counts)

The record should reflect that the defendant has pled guilty to [Counts \_\_\_\_\_ of] the Information.

15. **I find that:**

the defendant is competent; (s)he fully understands the charge(s) against him/her; there's a factual basis for his/her plea(s); (s)he knows the maximum punishment that could be imposed on the charge(s); and (s)he knows his/her trial rights, and has voluntarily waived those rights.

**I further find that:**

the defendant's decision to plead guilty was voluntary, knowing, and not the result of any force, pressure, threats, or promises.

16. Acceptance of **Plea(s)** of Guilty

Accordingly, I accept the defendant's **plea(s)** of guilty.

17. **I HEREBY ORDER A PRESENTENCE INVESTIGATION REPORT.** The parties should pay careful attention to the deadlines relating to the preparation of the report. **I hereby scheduled a sentencing hearing in this case for (date and time).**

18. *[The judge will ask the lawyers the following question:]* **IS THERE ANYTHING FURTHER THAT NEEDS TO BE DONE TO CONCLUDE THIS HEARING** **[Mr./Ms. defense counsel]?** **[Mr./Ms. prosecutor]?**

**We are in recess.**